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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,619	12/23/2004	Masao Oono	263785US0PCT	7970

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EXAMINER	
STULII, VERA	

ART UNIT	PAPER NUMBER
1794	

NOTIFICATION DATE	DELIVERY MODE
03/18/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/517,619	OONO, MASAO	
	Examiner	Art Unit	
	VERA STULII	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☒ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *See Continuation Sheet*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :08/01/2007, 07/26/2005, 02/24/2005, 01/26/2005 .

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is rendered indefinite for the recitation of the phrase "producing a prefermentation liquid from ...and water as a raw material". It is not clear as to what the actual method step involved in preparation of pre-fermentation liquid.

Claim 8 is rendered indefinite for the recitation of "comprising" phrase. The recitation of a selection from a group of elements in a claim should comply with accepted U.S. Patent practice with regard to the recitation of Markush grouping of claim elements. Phrases using "comprising" are open sets, and should recite elements in the alternative (i.e. "comprising A, B, C or D").

Regarding claims 9 and 10, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

The term "beer-likeness" in claim 11 is a relative term which renders the claim indefinite. The term "beer-likeness" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

The terms "functionality" in claim 12 and "characteristic taste" in claim 13 also render the claims indefinite. The term "characteristic taste" and "functionality" are not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-9 and 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Van Gorkum (EP 1,063,285).

In regard to claims 1 and 14, Van Gorkum discloses a method for production of beer-type beverage. Van Gorkum discloses that the "the malting step is completely abolished" (Abstract). Van Gorkum discloses preparation of wort by mixing starch-based glucose syrup (i.e. carbon source-containing syrup"), amino acids and/or small peptides (i.e. nitrogen source), hops, water and coloring matter ([0016], [0017], [0037]). Van Gorkum further discloses fermenting the mixture "with a suitable yeast strain" ([0017]).

Van Gorkum discloses that "[]t]he present invention is based on the recognition that it is essential that the wort comprise certain carbohydrate and proteinaceous components. The composition has to be chosen in such a way that the yeast can

ferment and produce alcohol from the sugars the second prerequisite is that the composition is such that the product has all desirable characteristics in terms of taste, mouthfeel, aroma, foam formation and –stability" ([0022]). Since Van Gorkum discloses beer-type beverage having all characteristics of beer including foam formation and foam stability (retention), therefore the wort composition comprises foam formation and foam stabilizing substances. It is noted that claim 1 is being construed as a foam formation/stabilization substances are not necessarily different from the recited wort ingredients. However, even if foam formation/stabilization substances were construed to be different from the recited wort ingredients, the fact that Van Gorkum discloses the same wort ingredients as recited and achieves foam formation/stabilization, means that the wort composition contains foam/formation/retention substances.

In regard to claim 2, 11 and 13, Van Gorkum discloses adding hops (i.e. flavoring material/bittering substance) to the wort (i.e. prefermentation liquid) prior to fermentation ([0017], [0058], [0058]). Van Gorkum discloses adding hops for flavoring purposes ([0021]).

In regard to claim 3, Van Gorkum discloses that nitrogen source is an amino acid containing material ([0017], [0029], [0030]).

In regard to claims 4 and 5, Van Gorkum that carbon source containing syrup is obtained from potato, corn, or rice (page 6 claim 2).

In regard to claim 6, Van Gorkum discloses that nitrogen source (protein) is obtained from potato, corn, or rice (page 6 claim 3)..

In regard to claim 7, Van Gorkum discloses that "the protein fraction may be extracted from any cereal source (or bran or fiber) as long as it contains amino acids, which are essential for the yeast that is used for fermentation" ([0029]).

In regard to claim 8, Van Gorkum discloses hop extracts [0037], hop pellets [0042], hops [Abstract], isomerized hop extract (iso-alpha-acid-extract) [0055], hop-oil emulsion [0058].

In regard to claim 9, Van Gorkum discloses caramel color [0037].

In regard to claim 12, Van Gorkum discloses using fiber such as malto dextrin in preparation of wort [0052].

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Gorkum (EP 1,063,285) in view of Wubben et al (WO 96/04363).

Van Gorkum is taken as cited above.

Van Gorkum does not disclose a foam formation and/or retention substance as recited in claim 10.

Wubben et al disclose pectin as a foam stabilizer for foam heads in beer (Abstract). Wubben et al disclose "[t]hese foam stabilizers are preferably obtained from hops, which is a constituent that is inherent in beer and accordingly offers the advantage, among others, that the foam stabilizers need to have no negative effect on the taste of the beer. Preferably, the pectins are obtained from hop cones or bines" (Abstract). Wubben et al disclose that foam stabilizer is added to beer to obtain high-quality form (page 2).

Since Van Gorkum discloses beer-type beverage having foam formation characteristics, and Wubben et al disclose using pectin derived from hops as a suitable foam stabilizer for beers to obtain high quality foam, one of ordinary skill in the art would have been motivated to modify disclosure of Van Gorkum and to employ pectin as a foam stabilizer. One of ordinary skill in the art would have been motivated to do so, since Van Gorkum discloses production beer-type beverage from wort containing hops, and Wubben et al teach advantages of pectin derived fro hops.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VERA STULII whose telephone number is (571)272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

VS

/Steve Weinstein/
Primary Examiner, Art Unit 1794